IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2951 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMILABEN PUKHARAJ SHAH

Versus

STATE OF GUJARAT

Appearance:

MR NAVIN K PAHWA for Petitioner

Mr M.A.Bukhari,AGP for Respondent No. 1

Mr. Uday I. Vyas for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/03/2000

ORAL JUDGEMENT

Rule. Mr. Bukhari appears for respondent No.1 and waives service of notice of rule, whereas Mr. Uday Vyas appears

and waives service of notice of rule on behalf of respondents Nos. 2 and 3. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed by the petitioner, widow of Pukhraj K. Shah, a Swatantra Sainani for appropriate writ, direction of order directing the Central Government and State Government to give her Swatantra Sainani pension in accordance with the declared policy of the Government.

It was the case of the petitioner that Pukhraj K. Shah was Swatantra Sainani who had undergone imprisonment between October 2, 1942 and April 19, 1943. Thus, he had remained in jail for more than six months. It was also stated that the petitioner is getting pension from the State Government but she is also entitled to get pension from the Central Government since husband of the petitioner had remained in jail for more than six months. Without there being any ground whatsoever, the prayer of the petitioner had not been granted by the Central Government.

At the time of hearing, my attention was invited by the learned counsel for the petitioner to a communication,dated June 1, 1998 addressed by the State Government, which has been annexed along with affidavit in reply filed by Under Secretary, General Administration Department of the State Government. In the said communication, the Under Secretary to Government of Gujarat informed the Under Secretary to Government of India,Freedom Fighters' Division, Ministry of Home Affairs, New Delhi that case of Pukhraj K. Shah was covered as per the policy of the Central Government to grant Swatantra Sainani Pension. It was also observed as under:

"In this context, it may be stated that earlier, Late Shri Pukhraj K.Shah has applied to Govt., of India directly under 1972 scheme and latter on Smt. Ramilaben Shah has applied to Govt,. of India directly on dt. 25.6.1985 . Now Smt. Ramilaben K.Shah has submitted revised application dt. 20.1.1997 which comprise following particulars:

(i) Smt. Ramilaben P.Shah has claimed in her application that her late husband Shri Pukhraj Keshrimal Shah, had taken active part in freedom

movement and suffered imprisonment for six and half months under section 56 (4) of D.I. rules at Thane Jail from 2.10.1942 to 19.4.1993. She has not produced jail certificate in support of her claim. However, she produced letters dated 20.11.1986 and dt. 30.8.,1995 of Superintendent, Thane Central Prison, Thane about non availability of the register pertaining to the period of imprisonment of late Shri Pukhraj Shah.

(ii) She produced certificates of prominent freedom frighters who were co-prisoners during 1942-43 with her husband.

(a) Shri Kecherdas Megharaj Shah (Central Govt. pensioner) who certified that late Shri Pukhraj K.Shah was with him in Thane jail during 2.10.42 to 19.4.43.

(b) Shri Shamrao R. Patil, Ex- MLA and Minister , Bombay State who certified that late Shri Pukhraj K.Shah was with him in Thane Jail for six and half months during 1942 movement.

(c) Shri Mohanbhai Prithviraj Shah (Central Govt. pensioner) who certified that late Shri Pukhraj K.Shah was with him in Thane jail during 2.10.42 to 19.4.43.

It reveals from the above facts that late Shri Pukhraj K.Shah has suffered imprisonment for a period of more than six month.

The State Government has therefore decided to recommend his case for S.S.S pension under Central Government scheme of 1980. I therefore request you to take up the matter at appropriate level and intimate the decision taken at the earliest."

In my opinion, in the light of the above communication as also recommendation by the State Government, in the case of the petitioner , the only direction which can be

issued to the Central Government would be that the Central Government shall re-consider the case of the petitioner for grant of pension if she is otherwise eligible under the scheme and if so, to grant such benefits. Central Government shall decide the application in accordance with law as expeditiously as

possible preferably within three months from the receipt of writ . It is also open to the petitioner to make any other application if she intends to make within four weeks from today. Petition is accordingly allowed. Rule made absolute to the aforesaid extent. No order as to costs.

---

parekh